

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

David A. Blasi and Paula J. Blasi,
as trustees of the Blasi Living Trust, on
behalf of themselves and a class of similarly
situated persons,

Plaintiffs,

v.

Bruin E&P Partners, LLC and Bruin E&P
Operating, LLC,

Defendants.

Case No. 3:20-cv-00085

**BRUIN DEFENDANTS' POSITION REGARDING POTENTIAL
CERTIFICATION OF A QUESTION TO THE NORTH DAKOTA SUPREME COURT**

[¶1] Defendants Bruin E&P Partners, LLC and Bruin E&P Operating, LLC (collectively “Bruin”) respectfully submit these comments regarding the certification of a question to the North Dakota Supreme Court regarding an oil royalty clause.

Relevant Procedural History

[¶2] On September 10, 2020, the parties filed their Notice of Entry of Confirmation Order in Bankruptcy Proceeding and Stipulation to Continue Stay Until, and to Be Bound By, Ruling in Related Case [Doc 14], which notified the Court that: (i) the automatic stay had been lifted, (ii) the parties had stipulated to be bound by a ruling on the motion to dismiss filed in *Blasi Trust, et al. v. Kraken Development III, LLC and Kraken Operating, LLC*, Case No. 3:20-cv-00092 (D.N.D.) (the “*Kraken* case”), and (iii) the parties had stipulated to continue the stay of the case until the ruling in the *Kraken* case is issued. On September 11, 2020, the Court adopted the

stipulation by order [Doc 15]. Thereafter, on November 10, 2020, Bruin sought a partial lifting of the stay for the purpose of being heard on the issue of certifying a question of law to the North Dakota Supreme Court as raised in the *Kraken* case and three other putative class actions filed by the Plaintiff Blasi Trust. Plaintiff indicated it did not object, and on November 12, 2020, the Court accordingly lifted the stay by order [Doc 21].

Position Regarding Certification

[¶3] Like the *Kraken* defendants, Bruin objects to certifying a question to the North Dakota Supreme Court at this stage in the proceedings. The *Kraken* motion to dismiss, effectively adopted by Bruin, merely asks whether the meaning of the oil royalty clause is clear on its face after applying North Dakota's well-established rules of construction and ascribing meaning to each of the 15 words at issue (including the verb "connect"). If the meaning is clear on its face, then certification to the Supreme Court is unnecessary. If the Court is now unable to find as a matter of law that the meaning proffered by the *Kraken* motion is the clear and unambiguous meaning of the oil royalty clause (a finding which would be contrary to the plain language of the clause itself), then certification now to the Supreme Court is necessarily premature because the case first would need to proceed to discovery to develop a factual record to shed light on the meaning of the clause.

[¶4] Furthermore, Bruin emphasizes for the Court its firm belief that the facts of how it and the other defendants in each of the five putative class actions filed by the Blasi Trust will vary from case to case, and even lease to lease. Crude oil is not produced, marketed, and transported in one uniform manner; nor are the costs incurred uniform; nor is there a single manner or method by which all defendants or oil producers account for said costs. And, of course, at this stage in the various putative class actions, none of these facts are known. Thus, certifying a single question applicable to all five cases to the North Dakota Supreme Court now is fraught with peril.

[¶5] For the sake of brevity, Bruin adopts and incorporates hereto the arguments and comments of the *Kraken* defendants in the record of Case No. 3:20-cv-00092 filed on November 16, 2020, as "Kraken Defendants' Position Regarding Potential Certification of a Question to the North Dakota Supreme Court."

Dated: November 16, 2020

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